

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARTIN K. MICHELMAN,
Plaintiff,

v.

SUFFOLK COUNTY, SUFFOLK
COUNTY SHERIFF'S DEPARTMENT, and
ANDREA J. CABRAL, IN HER OFFICIAL
AND INDIVIDUAL CAPACITIES
Defendant.

C.A. No. 05-CV-11577 RGS

**PLAINTIFF'S UNOPPOSED MOTION TO VOLUNTARILY
DISMISS THE COMPLAINT WITHOUT PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff Martin K. Michelman hereby submits his motion to voluntarily dismiss the complaint without prejudice, and without the award of fees and costs. Furthermore, Plaintiff requests that this Court not rule on the various motions that are pending. On June 1, 2006, Attorney for Defendant, Kathleen M. Cawley, Esq., stated that Defendants would not oppose the instant motion.

This case involves a 42 U.S.C. § 1983 claim, in which the Plaintiff alleges that he was terminated from his employment with Suffolk County for exercising his right to free speech under the First Amendment.

In light of the May 30, 2006 Supreme Court decision, Garcetti v. Ceballos, 547 U.S. ___, (2006), 2006 WL 1458026 (U.S.), the viability of the Plaintiff's claim is seriously undermined. That case appears to hold that the First Amendment permits a

public employer to retaliate against an employee for speech uttered within the scope of the employee's duties.

The Garcetti decision represents a new, and dramatic limitation on First Amendment rights. Consequently, Plaintiff asks that the dismissal be without prejudice, such that Plaintiff may re-assert his rights to the extent that the Garcetti holding is revisited or narrowed in the future.

There are a variety of motions pending in this case, including two motions to amend, a motion to compel, and a motion relating to the scheduling order. These motions should not be ruled upon.

WHEREFORE, Plaintiff Martin K. Michelman requests that this Court grant his unopposed motion, and dismiss his complaint without prejudice, and without the award of fees or costs to any party.

The Plaintiff
By his attorneys,

/s/ Robert S. Mantell

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RULE 7.1 CERTIFICATION

I, Robert S. Mantell, hereby certify that on June 1, 2006, I conferred telephonically with the Attorney for Defendants, Kathleen M. Cawley, Esq., for the purpose of narrowing and/or resolving the issues contained in this motion. Ms. Cawley agreed not to oppose the instant motion.

/s/ Robert S. Mantell

Michelman motion to dismiss